

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0011

Sales and Use Tax

For The Periods: 12/31/94 through 12/31/96

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ISSUES

I. Sales and Use Tax – Simulcast Services

Authority: IC 6-2.5-2-1, IC 6-2.5-4-10, IC 6-2.5-4-6, IC 6-2.5-1-1, IC 6-2.5-2-2.

The taxpayer protests the assessment of gross retail tax on telecommunication services.

II. Sales and Use Tax –Decoder Rental

Authority: IC 6-2.5-2-1(b).

The taxpayer protests the assessment of gross income tax on decoder rental.

III. Sales and Use Tax – Totalisator Services

Authority: IC 6-2.5-2-1, 45 IAC 2.2-4-27 (d)(3)(B).

The taxpayer protests the assessment of gross retail tax on totalisator services.

IV. Sales and Use Tax – Laundry Services

Authority: IC 6-2.5-2-1.

The taxpayer protests the assessment of gross retail tax on laundry services.

STATEMENT OF FACTS

The taxpayer is in the business of operating and maintaining a pari-mutual racetrack. The taxpayer also has three satellite locations in Indiana. In addition to live racing, the taxpayer broadcasts other races. The taxpayer also offers off track betting at its satellite locations.

1. Sales and Use Tax – Simulcast Services

DISCUSSION

In 1994 the taxpayer entered into a contract with "S" to provide television production equipment and services at its various locations. As part of the contract "S" agreed to provide for the design, installation, operation, and maintenance of closed circuit television systems and other systems and services including equipment, personnel, and supervision to produce and display television programs. "S" utilized specialized equipment owned by it to fulfill the contract and included the equipment costs as part of the total price for services rendered. "S" then charged the taxpayer based upon several factors including the number and types of races produced and the number of hours required to produce the races.

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. The rental of tangible personal property is defined as a retail transaction. IC 6-2.5-4-10. Sales of services, except for some specifically enumerated services, are not retail transactions and are not subject to sales tax. Transactions furnishing both tangible personal property and services pursuant to a single contract for a total combined price are unitary transactions. IC 2.5-1-1. Sales tax is imposed on unitary transactions. IC 6-2.5-2-2.

State gross retail tax was assessed against the taxpayer on the services it purchased from "S" as one of the taxable enumerated services defined at IC 6-2.5-4-6:

(a) As used in this section, "telecommunication services" means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. The term does not include value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.

(b) A person is a retail merchant making a retail transaction when the person:

(1)furnishes or sells an intrastate telecommunication service; and

(2)receives gross retail income from billings or statements rendered to customers.

"S" provides services and equipment to Taxpayer at three Indiana locations. Each of these locations is staffed by "S" employees. These employees provide services including the production of a daily television racing program taped using several different

cameras, race officials' replays and slow motion replays. For a full day of simulcasting and an evening of live racing at Taxpayer's facility, one operator and one supervisor from "S" control the simulcasting. For a full day of live racing, "S" provides three operators, four camera operators, one uplink operator and one supervisor. These employees have the specific expertise and skill to install, operate, maintain and service the equipment on a daily basis. In this case the taxpayer purchases services and equipment which include more than the intrastate transfer of information.

The transaction is, however, a unitary transaction furnishing both tangible personal property and services, both taxable and exempt, for a single price pursuant to a contract. Therefore the sales tax properly applies in this situation.

FINDING

The taxpayer's protest is denied.

II. Sales and Use Tax – Decoder Rental

DISCUSSION

In order to receive satellite transmissions from other racing facilities the taxpayer rented decoders. The decoders decipher the transmissions and allow the taxpayer's patrons to view other races. The taxpayer rented decoders from various vendors with property located in Indiana. The taxpayer protests the assessment of gross retail tax on the rental of these decoders.

The taxpayer contends that it cannot pay the gross retail tax directly to the state because retail merchants have the obligation to collect the tax pursuant to the following provisions of IC 6-2.5-2-1 (b):

The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

In this case, the taxpayer acquired the property in a retail transaction and is therefore liable for the tax. The fact that the agent, the retail merchant, did not collect the tax as the agent for the state does not take the authority to collect the tax away from the principal, the state.

FINDING

The taxpayer's protest is denied.

III. Sales and Use Tax – Totalisator Services

DISCUSSION

During 1994, the taxpayer entered into contracts with "UT" for the provision of totalisator services. As part of the contract, "UT" was responsible for automatically registering and totaling the amount wagered on both live and simulcast races and then issuing daily

summaries of the wagering activities at each of the taxpayer's locations. At all times, "UT" retained ownership of and insured the equipment used to provide the services. "UT" always exercised control over the computers used in providing the totalisator service. "UT" has a system manager responsible for the Indiana service area. "UT" charged for its services based upon a percentage of all pari-mutual wagers and the number of racing days. In mid 1995, "UT" began charging and collecting sales tax on the total contract price. The taxpayer protests the assessment of tax prior to mid 1995.

The issue to be determined is whether this represents a lease of tangible personal property, which is taxable pursuant to IC 6-2.5-2-1, or the provision of a nontaxable service.

This issue is addressed at 45 IAC 2.2-4-27(d)(3)(B) as follows:

The rental of tangible personal property together with an operator as part of a contract to perform a specific job in a manner to be determined by the owner of the property or the operator shall be considered the performance of a service rather than a rental or lease provided the lessee cannot exercise control over such property and operator.

The taxpayer contends that the situation fits within this definition of a service. The taxpayer does lease the tangible personal property, the totalisator computers. According to the contract, "UT" services and maintains the computer system and trains the taxpayer's employees to operate the equipment and sets up the operation protocols. The contract further states that the taxpayer will furnish the necessary staff of tellers and mutuel department employees and that they will be supervised by employees of the taxpayer. The taxpayer therefore exercises significant control and does not qualify for exemption pursuant to 45 IAC 2.2-4-27(d)(3)(B).

FINDING

The taxpayer's protest is denied.

IV. Sales and Use Tax – Laundry Services

DISCUSSION

The taxpayer's employees are required to wear uniforms. The taxpayer pays a per pound charge to a laundry service for the laundering of the uniforms. The gross retail tax is on retail transactions transferring tangible personal property. IC 6-2.5-2-1. Unless the provision of a service is specifically defined as a retail transaction, it is not subject to the gross retail tax. The provision of laundry services is not defined as a retail transaction. Therefore, it is a nontaxable service.

FINDING

The taxpayer's protest is sustained.